

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON  
RAISED BILL 5481, AN ACT ESTABLISHING THE CENTRAL OFFICE OF  
ADMINISTRATIVE HEARINGS**

**March 10, 2014**

The Freedom of Information Commission ("FOIC" or "Commission") appreciates the opportunity to comment on Raised Bill 5481, An Act Establishing the Central Office of Administrative Hearings.

The Commission strongly opposes the bill, which places a proposed Central Office of Administrative Hearings ("COAH") within the Office of Governmental Accountability ("OGA"), and transfers the hearings functions of a multitude of agencies, such as the Department of Transportation, the Commission on Human Rights & Opportunities, the Department of Children & Families, as well as the FOIC, the State Elections Enforcement Commission ("SEEC"), and the Office of State Ethics ("OSE") into such office. While there may be good reasons for certain agencies to have their hearings conducted under a uniform umbrella, the FOIC is not a good fit for such a model. The reasons are outlined below. They are the same reasons why a similar proposal, containing a similar concept, was defeated last year. *See* House Bill 6354, An Act Implementing the Governor's Budget Recommendations Concerning General Government (sections 131, 133, and 141).

**A. THE BILL THREATENS THE INDEPENDENCE OF THE FOIC**

The proposed model disregards the core independent missions of the agencies such as the FOIC, the OSE and the SEEC, and utterly fails to incorporate or take into account the practices and procedures under which these entities operate under existing statute and regulation. The current proposal would transfer the FOIC's legal and administrative staff to the COAH. If the bill passes, FOIC staff will be reduced to one person.

Under the proposal, hearings on FOIC complaints would be conducted, and final decisions would be issued, under the authority of a Chief Administrative Law Judge. The Chief Administrative Law Judge would be appointed, and subject to removal, by the Governor. Currently, the FOIC, an independent body made up of citizen commissioners, performs those functions.

**B. THE BILL PRESENTS A FIX FOR SOMETHING NOT BROKEN**

When the FOIC was created by landmark unanimous legislation in 1975, the General Assembly wisely took pains to ensure that one political office would not control the Commission. Today, Commissioners are appointed by the Governor and by legislative leaders, and serve staggered terms. Membership cannot consist of a supermajority of supporters of one political party. The system has worked very well over the past several decades. The Commission is nationally recognized as the first, and best, model in the nation to handle Freedom of Information complaints, precisely because of its independence. Why change that now, when the Commission's processes and regulations fairly and efficiently handle the multitude of complaints that are filed with it each year?

### C. THE BILL WILL NECESSITATE INCREASED FINANCIAL COSTS

Left unanswered by this proposal is what will happen to the Commission itself. Also left unanswered is whether the OGA can absorb such a large new division. Currently, the Office of the Executive Administrator, which provides back office support to the divisions within OGA, consists of the Executive Administrator and five staff members. Was any thought or study given to the feasibility of this proposed new agency and its placement within the OGA? As far as we know, no study has been conducted regarding the amounts of complaints filed with each agency annually, the number of personnel which would need to be transferred, and the cost of the creation of this new agency. Thus, there has been no analysis of the caseload numbers, current procedures, time requirements, and conflicting processes preceding this proposal. From what we gather, neither has there been any analysis of the diverse and complex statutes, regulations, and case law fundamental to each of the agencies proposed to be immersed into the COAH.

In these times of economic uncertainty, why create a new costly entity when it has not been demonstrated that a need exists for such an endeavor?

### D. THE BILL WILL RESULT IN UNNECESSARY CONFLICTS

Finally, the FOIC notes that there are inherent conflicts in the design of the new entity. Last year, over 800 formal complaints were filed with the Commission, 364 of which were against state agencies, almost all of which agencies are under the authority of the governor, and are part of the administration. Under the current law, such complaints were reviewed by the staff of our independent Commission; and many were heard by citizen Commissioners or FOIC staff, who report not to the governor but to the Commission as a whole. Under the proposal before you, future complaints against state agencies will be reviewed and heard by staff that can be hired and fired by the Chief Administrative Law Judge, a gubernatorial appointee. This presents an unnecessary and alarming conflict.

Moreover, the FOIC has jurisdiction over each of the entities within the OGA and would have jurisdiction over the COAH, its personnel, and the Chief Administrative Law Judge. Obvious conflicts, as well as ethical and professional responsibility questions, will arise and will threaten the public's confidence in these heretofore independent entities if this proposal becomes law. Certainly, public perception of the Commission will suffer, without a doubt.

Finally, the creation of the COAH will deprive Connecticut citizens of the specialized expertise of the individuals who currently work for the FOIC, the OSE, and the SEEC, which the public has come to rely upon and trust. The Commission urges this committee to act courageously, as it has done in the past, to preserve the independence of the FOI Commission and, at the very least, remove the FOIC, the OSE and the SEEC from inclusion in this proposal, and also remove the COAH itself from inclusion within the OGA.

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